

REMARKS

The present application has been reviewed in light of the Office Action dated April 1, 2009. Claims 3-11 are presented for examination, of which Claim 3 is in independent form. Claims 12-15 have been withdrawn without prejudice or disclaimer of the subject matter presented therein. Favorable reconsideration is requested.

Initially, for the reasons discussed below, Applicants respectfully request that the Office vacate the April 1, 2009 Final Office Action and issue a new Office Action that properly addresses the Official Notice traversed by Applicants in the January 5, 2009 Amendment. Additionally, Applicants respectfully request the courtesy of a telephonic interview with the Examiner, prior to the issuance of the next Office Action, should the Office continue to maintain the outstanding 35 U.S.C. 112, second paragraph, rejection.

Claims 3-11 were rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action states that the recitation, “‘a second application[,]’ is not found from the descriptive portion of the specification and is not clear as to its meets [sic] and bounds.” Office Action, page 2. Applicants continue to respectfully submit that the recitation “a second application” meets the requires of 35 U.S.C. 112, second paragraph, for the following reasons.

With reference to paragraph 134 of the specification and Figure 10, in a non-limiting example, a fob data structure in accordance with the present invention can include multiple applications such as a fob user ID application 1006, a payment system application 1008, an airline application 1010, a hotel application 1012, and a rental car application 1014. By way of example, the airline application 1010 can include a common file structure as well as additional file structures specific to a particular airline partnering organization. *See* Fig. 14 and

specification, paragraph 161. Airline application 1012 represents one of the many exemplary applications that the “second application” of Claim 3 could represent.

In view of the above discussion with regard to an exemplary airline application 1012, Applicants respectfully submit that the features of Claim 3 with regard to the recited “second application” are clearly described in the specification as originally filed. Also, in view of the above discussion and in view of the characteristics of “a second application” explicitly recited in Claim 3, Applicants respectfully submit that the metes and bounds of Claim 3 are readily apparent to one of ordinary skill in the art. Accordingly, it is believed that the rejection under Section 112, second paragraph, has been obviated, and its withdrawal is therefore respectfully requested.

Should the Office maintain this rejection in the next Office Action issued, Applicants request the courtesy of a telephonic interview with the Examiner prior to issuance of that Office Action.

The Office Action rejected Claims 3-11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,317,721 (“*Hurta*”). Applicants respectfully traverse the rejections with regard to Claims 3-11 and submit that independent Claim 3, together with the claims dependent therefrom, are patentably distinct from the cited art for at least the following reasons.

On pages 6 and 7 of the January 5, 2009 Amendment, Applicants properly traversed the Official Notice taken by the Office in accordance with MPEP § 2144.03(C) and requested that the Office provide documentary evidence to support the facts alleged to be common knowledge in the art. MPEP § 2144.03(C) recites that “[i]f applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary

evidence in the next Office action if the rejection is to be maintained.” In the outstanding Final Office Action, the Office has simply reproduced the § 103(a) rejection recited in the non-final Office Action of September 3, 2008 and failed to address Applicants’ traversal. Accordingly, Applicants respectfully request that the Office vacate the Final Office Action of April 1, 2009 and issue a new Office Action that properly addresses the Official Notice traversed by Applicants in the response of January 5, 2009.

Furthermore, because the Office failed to provide documentary evidence for the properly traversed Official Notice, the rejection under 35 U.S.C § 103(a) is deemed obviated, and its withdrawal is respectfully requested.

The other rejected claims in this application depend from the independent claim discussed above and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim also is deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

Applicants’ undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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